Tan Boon Aun v Timbalan Menteri Dalam Negeri, Malaysia & Anor

HIGH COURT (PENANG) — CRIMINAL APPLICATION NO 44-53-90
EDGAR JOSEPH JR J
3 AUGUST 1990

Preventive Detention — Arrest for purpose of investigation — Authorization of detention — Requirements for validity of authorization — Dangerous Drugs (Special Preventive Measures) Act 1985, s 3(1), (2) & (4)

The applicant for a writ of habeas corpus was arrested under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') on 30 March 1988 at 2pm. Half an hour later, the arresting officer, an inspector, signed an authorization dated 30 March 1988 pursuant to s 3(2) proviso (a) extending the period of detention by 24 hours, commencing from 31 March 1988. The period of remand was stated to end at 2pm on 1 April. On the same date, at 3.40pm, an assistant superintendent signed an authorization pursuant to s 3(2) proviso (b) extending the detention period by 12 days with effect from 1 April 1988 but no time was stated. On 13 April 1988 at 9.30am, a deputy superintendent signed an authorization dated the same day pursuant to proviso (c) to s 3(2) extending the period of detention by 46 days with effect from 13 April 1988.

The applicant argued that there was a break in the chain of authorization between midnight on 12 April 1988 and 9.30am on 13 April, and the detention during that period was illegal. The respondents argued that the authorized detention for 12 days ended at midnight on 13 April.

Alternatively, they argued that the deputy superintendent had on 1 April 1988 reported the circumstances of the detention to the Senior Assistant Commissioner of Police as required under s 3(2) proviso (c) and this authorized the detention for more than 14 days and would cover the period of the alleged break.

Held, allowing the application:

(1) The period of detention for 12 days ended at midnight on 12 April and not at midnight on 13 April.

(2) The scheme of s 3 of the Act envisages that the period of 60 days is divided into three segments of time and that the longer the segment of time, the higher is the rank of the police officer whose intervention is required. Section 3(2) envisages a certain sequence in the requisite authority to detain within the period of 60 days.

(3) The deputy superintendent's authorization under s 3(2)(c) was legally ineffective as that section merely requires the making of a report to the Inspector General who shall then report to the minister.

(4) The deputy superintendent's report under s 3(2) proviso (c) was only effective to authorize the continued detention of the applicant with effect from the expiry of the second segment of 14 days. The report cannot authorize the detention during the last two days of the 14-day segment, before the start of the third segment of 44 days. These two days, ie 13 April and 14 April, were not covered by the assistant superintendent's authorization as that was only for 12 days. The detention during those two days was therefore illegal.

(5) Even if the deputy superintendent's purported authorization on 13 April signed at 9.30am is valid, it still did not cover the applicant's continued detention from midnight 12 April 1988 to 9.30am 13 April 1988.

(6) The deeming provision in s 3(4) cannot assist the respondents. Since there was a flaw in the process of the applicant's continued detention, it cannot be said that the applicant had been detained 'under the powers conferred by this section'. Such a phrase does not preclude the courts from determining whether the power in turn has been properly exercised and whether the detaining authority has acted within the powers conferred in the particular case.

[Bahasa Malaysia summary

Pemohon untuk writ habeas corpus ini telah ditangkap di bawah s 3(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta itu') pada 30 Mac 1988 pada pukul 2 petang. Setengah jam kemudian, pegawai polis yang menangkap si pemohon, seorang inspektor, menandatangani suatu pemberian kuasa bertarikh 30 Mac 1988 di bawah s 3(2) proviso (a) melanjutkan tempoh tahanan selama 24 jam, bermula dari 31 Mac 1988. Tempoh tahanan itu dikatakan berakhir pada pukul 2 petang pada 1 April. Pada hari yang sama, pada pukul 3.40 petang, seorang penolong penguasa menandatangani suatu pemberian kuasa di bawah s 3(2) proviso (b) melanjutkan tempoh tahanan itu selama 12 hari bermula dari 1 April pada pukul 2 petang. Tempoh tahanan itu dikatakan berakhir pada 12 April 1988 tetapi waktunya tidak dinyatakan. Pada 13 April pada pukul 9.30 pagi, seorang timbalan penguasa menandatangani suatu pemberian kuasa bertarikh 13 April di bawah priviso (c) kepada s 3(2) melanjutkan tempoh tahanan itu selama 46 hari bermula dari 13 April 1988.

Pemohon berhujah bahawa rentetan pemberian kuasa telah terputus antara 12 tengah malam pada 12 April dan 9.30 pagi pada 13 April dan tahanannya pada masa itu tidak sah. Responden-responden berhujah bahawa tahanan yang dibenarkan selama 12 hari berakhir pada tengah malam pada 13 April. Selain daripada itu, mereka juga berhujah bahawa timbalan penguasa telah melaporkan keadaan tahanan itu kepada Penolong Kanan Pesuruhjaya Polis pada 1 April sebagaimana yang dikehendaki di bawah s 3(2) proviso (c) dan ini membenarkan tahanan si pemohon yang melebihi 14 hari dan akan merangkumi tempoh tahanan yang dikatakan tidak sah.

Diputuskan, membenarkan permohonan itu:

(1) Tempoh tahanan selama 12 hari berakhir pada tengah malam pada 12 April, dan bukan pada tengah malam 13 April.

(2) Skim s 3 Akta itu membayangkan bahawa tempoh 60 hari ini dibahagikan kepada tiga bahagian masa dan lebih panjang bahagian masa itu, lebih tinggi pula pangkat pegawai polis yang harus mencelah. Seksyen 3(2) membayangkan sesuatu rentetan dalam pemberian kuasa untuk tahanan dalam tempoh 60 hari.

(3) Pemberian kuasa oleh timbalan penguasa di bawah s 3(2)(c) tidak sah kerana seksyen itu hanya memerlukan pembuatan laporan kepada Ketua Polis yang kemudian akan melaporkan kepada menteri.

(4) Laporan timbalan penguasa di bawah s 3(2) proviso (c) hanya sah untuk membenarkan penerusan tahanan si pemohon bermula dari akhirnya bahagian masa yang kedua selama 14 hari. Laporan itu tidak boleh membenarkan tahanannya pada dua hari terakhir dalam bahagian masa 14 hari itu, sebelum bermulanya bahagian ketiga selama 44 hari. Dua hari terakhir ini, iaitu 13 dan 14 April, tidak termasuk dalam

pemberian kuasa yang diberi oleh penolong penguasa kernana pemberian kuasa itu hanya untuk tempoh tahanan selama 12 hari. Oleh kerana itu, tahanan semasa dua hari itu tidak sah.

(5) Biarpun pemberian kuasa oleh penolong penguasa itu pada 13 April yang ditandatangani pada pukul 9.30 pagi adalah sah, ia tetap tidak merangkumi tahanan si pemohon dari tengah malam 12 April hingga 9.30 pagi 13 April.

(6) Peruntukan di bawah s 3(4) yang menganggapkan bahawa tahanan itu sah tidak boleh menolong pihak responden. Oleh kerana terdapat kecacatan dalam proses di bawah mana si pemohon telah terus ditahun, tidak boleh dikatakan bahawa si pemohon telah ditahan 'di bawah kuasa yang diberi oleh seksyen itu'. Rangkai kata itu tidak menahan mahkamah dari menentukan sama ada kuasa itu telah digunakan dengan cara yang sah dan sama ada pihak berkuasa telah bertindak di dalam batas kuasa yang telah diberikan dalam kes yang tertentu.]

Cases referred to

1 *Mangal Singh* v *Union of India* (1967) 2 SCR 109 (refd)
2 *Janapada Sabha* v *Central Provinces Syndicate Ltd* (1970) 3 SCR 745 (refd)
3 *West* v *Commissioner of Taxation (New South Wales)* (1936-37) 56 CLR 657 (refd)
4 *State of South Australia* v *Commonwealth* (1941-2) 65 CLR 373 (refd)
5 *R* v *Commonwealth Court of Conciliation and Arbitration* (1942-43) 66 CLR 488 (refd)
6 *Melbourne Corp* v *Commonwealth* (1946-47) 74 CLR 31 (refd)
7 *State of Victoria* v *Commonwealth* 45 ALJR 251 (refd)
8 *Re the Central Provinces and Berar Act* [1939] FCR 18 (refd)
9 *James* v *Commonwealth of Australia* [1936] AC 578 (refd)
10 *A-G* v *Prince Ernest Augustus of Hanover* [1957] AC 436 (refd)
11 *Koh Yoke Koon* v *Minister for Home Affairs, Malaysia & Anor* [1988] 1 MLJ 45 (folld)
12 *Reverend Thomas Pelham Dale's Case* (1881) 6 QBD 376 (refd)
13 *Re Tan Boon Liat* [1977] 2 MLJ 108 (refd)
14 *R* v *Secretary of State for Home Affairs, ex p Greene* [1942] 1 KB 87 (refd)
15 *Ex p Sacksteder* [1918] 1 KB 578 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 s 3(1), (2), (4)

Karpal Singh for the applicant.
Jalaldin bin Hussain (Senior Federal Counsel) for the respondents.

Cur Adv Vult

Edgar Joseph Jr J: This applicant for a writ of habeas corpus ad subjiciendum was arrested under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') on 30 March 1988 at 2pm at Jalan Heng Choon, Butterworth, by Inspector Wan Rashid bin Haji Wan Zain. Half an hour later, Inspector Wan Rashid signed an authorization dated 30 March 1988 (exh WR 2 to encl 15) pursuant to the provisions of proviso (a) to s 3(2) of the Act wherein it was stated that because it was not possible to complete the necessary investigations into the allegations made against the applicant within the period of 24 hours, following arrest, he was extending the period of detention by 24 hours commencing from 31 March 1988. By way of emphasis, immediately under the authorization and to the left of Inspector Wan Rashid's signature, was a note which read 'Period of remand ends on 1 April 1988 at 2pm.'

One hour and forty minutes thereafter, that is to say, at 3.40pm on 30 March 1988, Assistant Superintendent Mohd Arshad bin Abdullah signed an authorization dated the same day (exh MAA to encl 12) pursuant to the provision of proviso (b) to s 3(2) of the Act wherein it was stated that because it was not possible to complete the necessary investigations into the allegations made against the applicant within the period of 48 hours he was extending the period of detention by 12 days with effect from 1 April 1988 at 2pm. Here too, by way of emphasis, immediately under the authorization, and to the left of Assistant Superintendent Mohd Arshad's signature, was a note which read: 'Period of remand ends on 12 April 1988' though no time is mentioned as in the case of the previous authorization by Inspector Wan Rashid. In my opinion this period could only have ended at midnight on 12 April 1988.

At this point, I would interpolate to remark, for reasons which will be apparent later, that it is a fact of not a little moment that although Assistant Superintendent Mohd Arshad had the power under s 3(1)(b) to extend the period of the applicant's continued detention by up to 14 days, upon expiry of the initial 48 hours of detention, he chose to exercise it by extending the detention by only 12 days — which of course he was perfectly entitled to do. Nevertheless, in consequence, this led to certain events which in turn gave rise to the problems now confronting the respondents, which lie at the heart of the present application.

To resume the narrative of events, on 13 April 1988 at about 9.30am Deputy Superintendent Yeap Hooi Pin, the Timbalan Penguasa Polis of the Jabatan Siasatan Jenayah, Contingent Police Headquarters, George Town, signed an authorization dated the same day (exh YHP 1 to encl 13) *purportedly* pursuant to proviso (c) to s 3(2) of the Act wherein it was stated that because it was not possible to complete the necessary investigations into the allegations made against the applicant within the period of 14 days permitted under s 3(2)(c) he was extending the period of detention by 46 days *with effect from 13 April 1988*. In this case there was no note by way of emphasis stating when the period of remand was to expire but presumably this was intended to be midnight 28 May 1988.

Upon the above facts, it was submitted by Encik Karpal Singh, for the applicant, that as the authoriza-

tion by Assistant Superintendent Mohd Arshad aforesaid authorized the continued detention of the applicant for a period of 12 days with effect from 1 April 1988, thus ending at midnight on 12 April 1988, and Deputy Superintendent Yeap's authorization aforesaid did not take effect until 9.30am on 13 April 1988, there was no legal backing for the applicant's detention during the interval when Assistant Superintendent Mohd Arshad's authorization ended and when Deputy Superintendent Yeap's authorization took effect; that is to say, for the period from midnight on 12 April 1988 until 9.30am on 13 April 1988. The point whether Deputy Superintendent Yeap's purported authorization was valid was, however, never raised. In reply Encik Jalaldin bin Hussain, senior federal counsel, submitted on behalf of the respondents that the authorization of Assistant Superintendent Mohd Arshad which authorized the continued detention of the applicant for a period of 12 days with effect from 1 April 1988 ended *not* at midnight on 12 April 1988 but at midnight on 13 April 1988. Accordingly, since the authorization by Deputy Superintendent Yeap was made at 9.30am on 13 April 1988 and authorized the continued detention of the applicant for a further period of 46 days with effect from 13 April 1988, there was no break in the chain of authorization as contended for by Encik Karpal Singh.

I regret I am unable to agree with the submission of the learned senior federal counsel that the 12-day period of continued detention authorized by Assistant Superintendent Mohd Arshad expressed to take effect from 1 April 1988 ended at midnight on 13 April 1988. In my opinion, a simple arithmetical calculation will show it ended at midnight on 12 April 1988.

But, in a last ditch attempt to salvage the case for the respondents, the learned senior federal counsel submitted that if, contrary to his primary submission, the continued detention authorized by Assistant Superintendent Mohd Arshad ended at midnight on 12 April 1988 so that there was an apparent break in the chain of authorization from midnight on 12 April 1988 until 9.30am on 13 April 1988, this defect was redeemed by the fact that Deputy Superintendent Yeap had on 1 April 1988 reported the circumstances of the arrest and detention of the applicant to Senior Assistant Commissioner of Police Mohd Ghazali, a designated officer, as required under proviso (c) to s 3(2), the effect of which was to authorize the continued detention of the applicant for more than 14 days which would have covered the period of the alleged break.

It was pointed out that as investigations into the activities of the applicant were completed on 27 April 1988 and, on the next day, a full report of the same had been submitted by Senior Assistant Commissioner Mohd Ghazali to the minister, which resulted in the issuance on 14 May 1988 of a detention order under s 6(1) — within the 60-day period from date of the initial arrest, which is the maximum permissible period of detention pending enquiries limited under s 3(1) — the applicant's detention was authorized by law.

In answer, Encik Karpal Singh submitted that 3(2) had to be read in its proper perspective; that is to say, the chain of authorization provided for therein had to be adhered to in the sequence provided for in sub-ss (a), (b) and (c) to s 3(2). To quote him, 'there are no short cuts; you can't jump to (c) without going through (a) and (b).'

As the provisions of s 3(1), (2) and (4) are of pivotal importance to this application, it is necessary to reproduce them; they read as follows:

> (1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection (1) of section 6.
>
> (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection (1) of section 6:
>
> Provided that —
> (a) he shall not be detained for more than twenty four hours except with the authority of a police officer of or above the rank of Inspector;
> (b) he shall not be detained for more than forty eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;
> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.
>
> (4) Any person detained under the powers conferred by this section shall be deemed to be in lawful custody, and may be detained in any prison, or in any police station, or in any other place authorized generally or specially by the Minister.

In my view, a clear issue of law, namely, one of statutory interpretation, is presented and such an issue is plainly open on habeas corpus. I must therefore interpret the statutory procedures which are laid down, and determine whether there has been a breach of the procedural requirements which entitles the detainee to be released. Thus the language of the legislation conferring the power to detain pending enquiries under s 3(1) is clearly important.

When a statute confers power upon an authority without any express words of limitation there may still be inherent or implied limitations on that power. An inherent limitation is one which exists in the power as a permanent and inseparable element arising from the

character and constitution of the authority on whom the power is conferred. An implied limitation is one which is implicit in the scheme of which the power forms part.

The principle of inherent or implied limitations is based on deducing what is left unsaid from what is said, and perceiving what is implicit in the express provisions and the scheme of the statutory instrument. The ambit of any one power cannot be ascertained without considering its effect on the other powers. It is not difficult to cite an anthology of cases in support of these propositions. My choice of cases is as follows: *Mangal Singh* v *Union of India*;[1] *Janapada Sabha* v *Central Provinces Syndicate Ltd*;[2] *West* v *Commissioner of Taxation (New South Wales)*;[3] *State of South Australia* v *Commonwealth*;[4] *R* v *Commonwealth Court of Conciliation and Arbitration*;[5] *Melbourne Corp* v *Commonwealth*[6] and *State of Victoria* v *Commonwealth*.[7]

In *Re the Central Provinces and Berar Act*[8] Gwyer CJ said at p 42: 'A grant of power in general terms standing by itself would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implications of the context, and even by considerations arising out of what appears to be the general scheme of the Act.'

And, as was said by Lord Wright in *James* v *Commonwealth of Australia*,[9] 'The question, then, is one of construction, and in the ultimate resort must be determined upon the actual words used, read not in vacuo but as occurring in a single complex instrument, in which one part may throw light on another ... '

Then, further down at p 627, he added that: 'A good draftsman would realize that the mere generality of the words must compel limitation in its interpretation ... It must take its colour from the context.'

So too, in *A-G* v *Prince Ernest Augustus of Hanover*,[10] Lord Somervell had occasion to remark at p 473 [quoting Sir John Nicholl in *Brett* v *Brett* (1826) 3 Add 210, 216]:

> The key to the opening of every law is the reason and the spirit of the law, — it is the 'animus imponentis' the intention of the lawmaker. However to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context in the statute: it is to be viewed in connection with the whole context ...

It is with the above principles in mind that I turn to examine the issue which arises for consideration upon the submissions aforesaid.

Looking at s 3(2), the first point to note is that the maximum permissible period of detention pending enquiries, is 60 days.

As for the 60-day period of detention pending enquiries, it is clear that the scheme of s 3 envisages that the period of 60 days is divided into three segments of time; the initial segment of 48 hours which requires the authorization of a police officer whose rank is not less than that of an Inspector (s 3(a)), the second segment of 14 days which requires the authorization of a police officer whose rank is not less than that of an Assistant Superintendent (s 3(b)) and the third segment of 44 days which requires the *report* — not an authorization, be it noted — of a police officer whose rank is not less than that of a Deputy Superintendent, regarding the circumstances of the arrest and detention, to the Inspector General or a designated officer who shall forthwith report the same to the minister (s 3(2)(c)).

The scheme of s 3(2) suggests that the longer the segment of time within the 60-day period, the higher the rank of the police officer whose intervention is required. That s 3(2) envisages a certain sequence in the requisite authority to detain within the period of 60 days in obvious.

To recapitulate, in the present case, from the contemporary documents annexed to the affidavits of the police officers concerned, it is apparent that during first segment of 48 hours ending at 2pm on 1 April 1988 the applicant was being detained by virtue of the authorization signed by Inspector Wan Abdul Rashid. As for the second segment of 14 days, the applicant was being detained by virtue of the authorization signed by Assistant Superintendent Mohd Arshad authorizing continued detention for a period not of the full 14 days, but of 12 days only, ending at midnight on 12 April 1988. And, as for the third segment of 44 days, the applicant was being detained, *purportedly* by virtue of the authorization signed by the Deputy Superintendent Yeap, authorizing continued detention for a period *not* of 44 days but of 46 days with effect from 13 April 1988.

I note, however, that nowhere in s 3(2)(c) do the words 'with the authority' appear as they do in s 3(2)(a) and (b). To repeat, s 3(2)(c) merely requires the making of a *report* by an officer of the rank of Deputy Superintendent or above, as to the circumstances of the arrest and detention, to the Inspector General or a designated officer who shall forthwith report the same to the minister, in order to justify continued detention for a period of more than 14 days.

Strictly, therefore, Deputy Superintendent Yeap's authorization under s 3(2)(c) was legally ineffective since there was no provision for it and, in any event, it was premature since it was expressed to take effect from 13 April 1988 — one day prior to expiry of the second segment of 14 days. It would, however, have been sufficient for Deputy Superintendent Yeap to have made his report to a designated officer for purposes of s 3(2)(c) to justify detention during the third segment of the 60-day time frame of detention pending enquiries, which is

what he had *also* done, though he did that as early as 1 April 1988 while Inspector Wan Abdul Rashid's authorization was still in force.

In these circumstances, the question which arises is whether Deputy Superintendent Yeap's report under s 3(2)(c) can redeem any apparent flaw in the process authorizing the applicant's continued detention upon the expiry of Assistant Superintendent Mohd Arshad's authorization aforesaid at midnight on 12 April 1988 — the 12th day of detention.

In my opinion, Deputy Superintendent Yeap's report under s 3(2)(c) was only effective to authorize the continued detention of the applicant with effect from the moment of expiry of the second segment of 14 days, ie the commencement of the 17th day until the 60th day of detention pending enquiries, ie from 15 April 1988 until 28 May 1988, both dates inclusive. It was thus ineffective to authorize the continued detention of the applicant for the whole of the two days, 13 and 14 April 1988, those being the 15th and the 16th days of detention and the last two days of the second segment of 14 days but, which as I have already noted, were not covered by Assistant Superintendent Mohd Arshad's authorization. Thus, there was no legal backing for the applicant's continued detention for the whole of those two days, 13 April 1988 and 14 April 1988.

If, contrary to my view, Deputy Superintendent Yeap's purported authorization dated 13 April 1988 and signed at 9.30am is valid for the reasons stated, it still did not cover the applicant's continued detention from midnight 12 April 1988 until about 9.30am 13 April 1988 — a period of some 9½ hours.

In a matter of deprivation of liberty strict compliance with the law is necessary. In particular, if the court is satisfied that the detention of the subject has not been procured by steps 'all of which were entirely regular' or that 'every step in the process which led to such detention was followed with extreme regularity', the court will not allow the imprisonment to continue. (See *Koh Yoke Khoon* v *Minister of Home Affairs, Malaysia and Anor.*[11])

So, for example, in the *Reverend Thomas Pelham Dale's Case*[12] Brett LJ said:

> Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so *by steps, all of which are entirely regular*, and that if he fails to follow *every step* in the process with extreme regularity the court *will not allow the imprisonment to continue.* (Emphasis added.)

And this is what Cotton LJ said at pp 469-470:

> I quite agree with Brett LJ that when persons take upon themselves to cause another to be imprisoned, they *must strictly follow the powers* under which they are assuming to act, and if they do not, the person imprisoned may be discharged, although the particulars in which they have failed to follow those powers may be *matters of mere form.* (Emphasis added.)

In *Re Tan Boon Liat,*[13] Lee Hun Hoe CJ (Borneo) quoted with approval at p 114 the above passages in the judgments of Brett and Cotton LJJ.

It follows therefore, that on the ground that there was no legal backing for the applicant's detention for two full days, ie on 13 April 1988 and 14 April 1988, his application for habeas corpus must succeed.

Nor would the deeming provision in s 3(4) which reads 'any person detained under the powers conferred by this section shall be deemed to be in lawful custody' be of any assistance to the respondents. The operative words are 'any person detained under the powers conferred by this section'. Having regard to my conclusions that there was a flaw in the process of the applicant's continued detention as aforesaid, it cannot be said that the applicant had been detained 'under the powers conferred by this section'. I am supported in this by certain English authorities to which I shall now refer.

Under s 18B(8) of the Emergency Powers (Defence) Act 1939, there was included the provision that 'any person detained in pursuance of these Regulations shall be deemed to be in lawful custody ...', but it has been consistently held that such a phrase does not preclude the courts from determining whether the power in turn has been properly exercised and whether the minister has acted within the powers conferred in the particular case. (See *R* v *Secretary of State for Home Affairs, ex p Greene*[14] at p 116. See also *Ex p Sacksteder*[15] at p 584 for a similar interpretation of a similar provision in the Aliens Order 1914.)

In the result, I direct that the applicant be set at liberty forthwith.

Application allowed.

Solicitors: *Karpal Singh & Co.*

Reported by *Zarinah Marican*